A.F.R.

Court No. - 5

Case :- WRIT TAX No. - 665 of 2020

Petitioner :- M/S Libra International Limited
Respondent :- Assistant Commissioner Commercial Tax And Another
Counsel for Petitioner :- Suyash Agarwal
Counsel for Respondent :- C.S.C.,A.S.G.I.

Hon'ble Surya Prakash Kesarwani,J.
Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Suyash Agarwal, learned counsel for the petitioner and Sri C.B. Tripathi, learned Special Counsel for respondent no.1.

2. This writ petition has been filed praying for following reliefs :-

> "I. Issue a writ, order or direction in the nature of Certiorari quashing the order no.731 dated 15.2.2018 passed by Respondent no.1 u/s 129(3) of the UPGST Act (Annexure No. 6)
>
> II Issue a writ, order or direction in nature of certiorari quashing GST DRC-07 dated 18.9.2020 (Annexure-9)
>
> III. Issue any other writ, order or direction in favour of the petitioner which this Hon'ble Court deems fit in the facts and circumstances of the case.
>
> IV. Award cost of the petition to the petitioner."

3. Pleadings of the writ petition indicate that the goods and vehicle of the petitioner were intercepted on 11.2.2018 on the ground that the goods in question were being transported without E-Way Bill and a notice under Section 129(3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act, 2017") was issued specifying the tax and penalty payable. Thereafter, an order for payment of tax of Rs.1,01,844/- and equivalent amount of penalty, total Rs. 2,03,688/-, was passed under Section 129(3) of the Act, 2017.

4. The petitioner claims to have deposited the amount of tax and

penalty vide demand draft dated 14.2.2018 and despite the same, an order in **FORM GST DRC-07** dated 18.9.2020 has been received by the petitioner showing the details of demand in respect of tax and penalty determined under Section 129 of the Act, 2017. Learned counsel for the petitioner submits that left with no other remedy, the present writ petition has been filed.

5. Learned counsel appearing for respondent no.1 submits that the order dated 15.2.2018 passed under Section 129(3) of the Act, 2017, has attained finality and the same cannot be assailed at this stage. He further submits that the writ petition is barred by laches and is not liable to be entertained for this reason. Further, submission is made that since the petitioner claims to have deposited the entire amount of interest and penalty by means of a demand draft dated 14.2.2020, in view of the provisions contained under sub-section (5) of Section 138 of the Act, 2017, all proceedings in respect of the notice under Section 129(3) shall be deemed to be concluded.

6. Learned counsel for the State respondent submits that in the event the petitioner has actually deposited the amount towards tax and penalty determined in terms of the order dated 15.2.2018 under Section 129(3) of the Act, 2017, he may apply for a rectification of the order uploaded in **FORM GST DRC-07** alongwith proof of having made the payment pursuant to the demand pertaining to tax and penalty.

7. Heard learned counsel for the parties and perused the record.

8. In order to appreciate the contention of the parties, the relevant statutory provision under Section 129 of the Act, 2017, which provides for detention, seizure and release of goods and conveyances in transit may be referred to. Section 129 reads as

follows :-

"**129. Detention, seizure and release of goods and conveyances in transit**.—(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, —

(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within fourteen days of such detention or seizure,

> further proceedings shall be initiated in accordance with the provisions of section 130:
>
> Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fourteen days may be reduced by the proper officer."

9. In terms of sub-section (1) of Section 129, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of the Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure. Sub-section (3) provides for issuance of a notice specifying the tax and penalty payable after detention or seizure of goods or conveyances, and passing of an order for payment of tax and penalty.

10. Sub-section (5) of Section 129 of the Act, 2017, contains a deeming provision, and in terms thereof, upon payment of the amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

11. The summary of the order uploaded electronically in **FORM GST DRC-07** bearing date 18.9.2020 specifying therein the amount of tax, interest and penalty is referable to Rule 142(5) of the Uttar Pradesh Goods and Service Tax Rules, 2017. For ease of reference, sub-rules (5), (6) and (7) of Rule 142 are extracted below :-

> "(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.
>
> (6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.
>
> (7) Where a rectification of the order has been passed in

> accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08.**"

12. Rule 142 of the aforementioned Rules, 2017, is in respect of notice and order for demand of amounts payable under the Act. Sub-rule (5) of Rule 142 provides that a summary of the order issued under certain provisions, including an order issued under Section 129, shall be uploaded electronically in **FORM GST DRC-07** specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. In terms of sub-rule (6) the order referred to in sub-rule (5) shall be treated as the notice for recovery. Further, sub-rule (7) provides that where a rectification of the order has been passed in accordance with the provisions of Section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08.**

13. A combined reading of sub-rules (5), (6) and (7) of Rule 142 of the Rules, 2017, indicate that a mechanism is provided for uploading summary of certain specified orders, including the order issued under Section 129 in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. In the event the order aforementioned has been rectified or withdrawn, a summary of the rectification order was of the withdrawal order is uploaded electronically by the proper officer in **FORM GST DRC-08**.

14. We may take note of the fact that implementation of the GST regime has brought about a major reform in the field of indirect taxation and all key aspects starting from registration till filing of the return, raising of e-way bill, filing of the refund claim, passing of

an order creating demand of tax and penalty, rectification of the order, etc. are dependant on a technology driven process with regard to which the necessary procedure is provided under the Rules.

15. The challenge sought to be raised to the order dated 15.2.2018 passed under Section 129 (3) of the Act, 2017, having been made at a belated stage, we are of the view that the relief claimed in this regard in terms of relief clause (I), would be barred by laches; moreso, in the light of the fact that the petitioner claims to have deposited the entire amount of tax and penalty determined under the said order, and by virtue of the deeming provision under sub-section (5) all proceedings in respect of the notice specified under sub-section (3) shall be deemed to be concluded.

16. As regards the prayer for quashing the summary of the order uploaded electronically in **FORM GST DRC-07** dated 18.9.2020, as under relief clause (II), we may observe that in the event the petitioner has actually made payment of the entire amount due towards tax and penalty referred to in the notice issued under sub-section (1) of Section 129, he may submit proof thereof before the authority concerned and apply for rectification/withdrawal of the said order.

17. Subject to aforesaid observations, the writ petition is dismissed.

Order Date :- 2.12.2020
Shalini

(Dr. Y.K.Srivastava,J.) (Surya Prakash Kesarwani,J.)